

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

PHILLIP FONDREN,

Petitioner,

vs.

**RICHARD ALLEN, Commissioner of
the Alabama Department of Corrections,**

Respondent.

CASE NO. 1:08-CV-2089-SLB-RRR

ORDER

In accordance with the Memorandum Opinion entered contemporaneously herewith, it is hereby **ORDERED** as follows:

1. Petitioner's Objections to the Magistrate Judge's Report as to Claims B.1. and C.1. are **OVERRULED**. The court **ADOPTS** the Report and Recommendation of the Magistrate Judge as to Claims B.1. and C.1. The Petition for Writ of Habeas Corpus by Prisoner in State Custody Under Sentence of Life Without the Possibility of Parole, (doc. 1), is **DENIED** as to Claims B.1. and C.1.

2. Petitioner's Objection to the Magistrate Judge's Report as to Claim A is **SUSTAINED**. The court **REJECTS** the Report and Recommendation of the Magistrate Judge as to Claim A. The Petition for Writ of Habeas Corpus by Prisoner in State Custody Under Sentence of Life Without the Possibility of Parole, (doc. 1), is **GRANTED CONDITIONALLY** as to Claim A of his Petition. This conditional Writ shall become

unconditional and permanent unless the State of Alabama commences further proceedings within 120 days of the date of this Order to afford the petitioner a new trial. The 120-day time period shall be tolled until the conclusion of any appeal from this Order, either by the exhaustion of appellate remedies or the expiration of the time period within which to file such appellate proceedings.

3. The court **ADOPTS** the Report and Recommendation of the Magistrate Judge as to the remaining claims, to which petitioner did not object. The Petition for Writ of Habeas Corpus by Prisoner in State Custody Under Sentence of Life Without the Possibility of Parole, (doc. 1), is **DENIED** upon all remaining Claims.

DONE, this 20th day of August, 2012.

A handwritten signature in black ink, reading "Sharon Lovelace Blackburn". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

SHARON LOVELACE BLACKBURN
CHIEF UNITED STATES DISTRICT JUDGE